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SPECIAL CIVIL APPLICATION No. 1009 of 1996

DATE OF DECISION : 06-02-1996

For Approval and Signature :
THE HON'BLE MR. JUSTICE S.K KESHOTE

1. Whether Reporters of Local Papers may be allowed to see the judgment ? YES/NO
2. To be referred to the Reporter or not ? YES/NO
3. Whether their Lordships wish to see the fair copy of the judgment ? YES/NO
4. Whethe

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of law as to the interpretation of the
Constitution of India, 1950 or
any other order made thereunder ? YES/NO

5. Whether it is to be circulated to the Civil Judge ? YES/NO

Mr. D.P Vora with Mr. R.R Tripathi, learned advocates for the Petitioner.

CORAM : S.K KESHOTE, J.
06-02-1996

ORAL JUDGEMENT

Heard learned counsel for the petitioner. Petitioner was suspended under the Order dated 10th January, 1985 and his Head Quarter has been fixed at Himatnagar. Petitioner made a request to the respondents to change his headquarter from Himatnagar to Ahmedabad. The change in headquarter has been prayed for due to his own personal difficulties and inconvenience. The request of the petitioner has been accepted and under the Order dated 8th April, 1985, his headquarter has been ordered to be changed from Himatnagar to Ahmedabad.

2. The petitioner claimed that as his headquarter has been made at Ahmedabad, he is entitled to HRA and CLA at the rate as admissible to other employees who are posted at Ahmedabad. This claim of the petitioner has been declined by the respondents vide order Annexure "D" dated 19th May, 1988. His request has been drawn-out on the ground that headquarter at Ahmedabad has not been fixed on administrative grounds. On the above grounds only, his headquarter has been fixed at Himatnagar as he for his convenience had prayed for the change in the headquarter, and accordingly, the change has been made. When it is made on his own request, he is not entitled for HRA and CLA at the rate at which it has been paid to employees posted at Ahmedabad. This Order dated 19th May, 1988 has not been challenged by the petitioner earlier, and now after more than 5 years, he had filed this writ petition before this Court.

3. Petitioner appears to have made a representation to the respondents wherein he made his claim on the ground that one Iqbal Hussinbhai has been given HRA and CLA on his fixing of his headquarter at Ahmedabad from Vadodara at the rate as admissible to the employees who are posted at Ahmedabad. This representation has been replied by the respondents on 20th December, 1995. The order passed earlier on 19th May, 1988 has been reproduced therein. In the letter dated 20th December, 1995 it has further been mentioned that his application for change of headquarter was accepted with the condition that he will not be entitled for HRA and CLA at Ahmedabad. It is not disputed that the petitioner was reinstated on 21st October, 1992. Two folds contentions have been raised by the learned counsel for the petitioner in this writ petition. Firstly, it is contended that the denial of HRA and CLA to the petitioner at the rate admissible at Ahmedabad on the ground that

headquarter has been changed on his own request is arbitrary and discriminatory. The employees who have been transferred on their own request at Ahmedabad, they are being given HRA and CLA at the rate payable to the other employees stationed at Ahmedabad. The case of the suspended employees and that of the transfer on request falls in the same class. I do not find any substance in this contention. The discrimination can only be complained in a class the employee who had been transferred on his own request, and the suspended employee whose headquarter has been changed on his request are the persons belonging to difference classes. The suspension though does not discontinue and ends relationship of the employee and the employer but the suspended employee is not discharging any duties. Petitioner who was under suspension was not given pay but it is only the subsistence allowance. Pay and the subsistence allowance cannot be equated. Pay is being paid for the work done and subsistence allowance is paid as allowance for maintenance till the departmental inquiry or the criminal case; as the case may be, pending against the employee comes to an end. The transfer made on request cannot be equated with the change of the headquarter of the concerned person on request. This is basic difference or distinction which makes the matter clear. In case what the petitioner is claiming is accepted then he will get the benefits though he was not working on the post. Petitioner cannot be allowed to have both - his choice headquarter during suspension as well as the benefits which are available to other employees who are discharging their duty. Thus, the first contention of the learned advocate for the petitioner stands rejected.

It has next been contended that discrimination has been made in the class of employees who are under suspension. Shri Iqbal Hussainbhai was under suspension at Ahmedabad but he has been given HRA and CLA at the rate as admissible to the employees at Ahmedabad. I do not find any substance in this contention also.

During the course of arguments, the learned counsel for the petitioner has admitted that the case of Iqbalbhai is not the case of the change of the headquarter under suspension on request. From the Annexure-G at page No. 19, the translation version of which has been taken from the counsel for the petitioner, it is clear that it is not the case of the change of the headquarter of that person on his own request. Shri Iqbalbhai Hussainbhai was placed under suspension when he was working at Vadodara and his headquarter has been fixed at Ahmedabad. It was a case where Shri Iqbalbhai's headquarter has been fixed at Ahmedabad for administrative reasons. When it is the case of fixing of the headquarter for administrative reasons, it is not correct to say on the part of the petitioner that petitioner's case is identical. When Hussainbahi's

headquarter was changed to Ahmedabad, he was likely to be given HRA and CLA at the rate at Ahmedabad on the ground that there is no question of discrimination; as alleged by the learned counsel for the petitioner. Again these are the persons who fall under two different class.

In the result, this writ petition fails and the same is dismissed.